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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

The situation of human rights in Somalia

Note by the secretariat

1. On 26 January 2000, the independent expert on the situation of human rights in Somalia, Ms. Mona Rishmawi, submitted a report (E/CN.4/2000/110 and Corr.1) in accordance with Commission on Human Rights resolution 1999/75. The report was based on a visit to the region from 14 to 24 November 1999 and described the prevailing conditions regarding respect for human rights and humanitarian law. These were examined within the framework of international humanitarian law relating to non-international armed conflict, employing in particular the principles identifying war crimes and crimes against humanity.

2. The Independent Expert resigned on 10 September 2000, and a replacement is being considered. The Secretariat submits this Note to the Commission on Human Rights at its fifty-seventh session, with a view to informing the Commission of the current situation in Somalia.*

* The annex is reproduced in English and French only.

Annex

SITUATION OF HUMAN RIGHTS IN SOMALIA

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I. THE POLITICAL SITUATION

1. In her last report to the Commission (E/CN.4/2000/100 and Corr.1) the independent expert on the situation of human rights in Somalia welcomed the peace initiative spearheaded by President Ismail Omer Guelleh of Djibouti aimed at ending the conflict in Somalia. Since then, President Guelleh's initiative has led to the convening of a peace conference in Djibouti and agreement on an interim government. The peace process went through different phases in which Mr. Guelleh sought to engage the various Somali factions and authorities in the dialogue and enlisted the support of the international and regional communities.

2. To solicit the advice of the Somalis on how best to convene a peace conference, President Guelleh convened a Technical Consultative Symposium in March 2000. About 60 prominent Somalis from inside and outside the country attended the symposium in their individual capacities. The Secretary-General's Special Adviser on Africa, Mohamed Sahnoun, also attended.

3. In his report of 19 December 2000 to the Security Council on the situation in Somalia (S/2000/1211), the Secretary-General noted that the symposium had recommended that President Guelleh's peace initiative be made as inclusive as possible by allowing the participation of faction leaders who desired peace and by enhancing the role of civil society within Somalia and in the diaspora. On the future structure of government, the symposium recommended a decentralized arrangement, as well as: consolidation of peace in areas where peace had been restored; the establishment of a human rights commission to monitor violations of the peace process; the departure of Somalis occupying the lands and properties of others; the reaffirmation of Mogadishu as the capital of Somalia; and the rehabilitation of militia members, with the conversion of some of them into a national army. The delegates also recommended stricter enforcement of the Security Council arms embargo on Somalia, stressed the need for international support for a future agreement by Somalis and called upon Djibouti to send delegations to Somalia to prepare for the Somali National Peace Conference.

4. As a follow-up to the recommendations of the symposium, the Government of Djibouti held further consultations with Somali clan leaders, civil society groups, business persons, religious leaders and local administrations. A delegation of business persons visited Djibouti in March and expressed its support for President Guelleh's initiative.

5. The Somali National Peace Conference (SNPC) was officially inaugurated on 2 May 2000 in the town of Arta and has since come to be known as the Arta Conference. During its first phase, the Conference was attended by traditional and clan leaders from all over the country. In addition, representatives of business interests, political factions and civil society took part in the deliberations leading to the adoption of an agenda for the second phase and a system of representation of Somalia's various clans. The four major clans (Hawiye, Dir, Darod and Digil/Mirifle) were accorded 180 delegates each. Each clan allotted 20 seats for women. The alliance of minorities was accorded 90 seats (including 10 for women). Clan elders who participated in the first phase were allowed to participate as members of their clan delegations without voting rights. The total number of those who participated in the subsequent phases of the Conference was more than 1,000 persons. The delegates agreed to make clan affiliation the sole basis for participation in the conference.

6. The second phase of the SNPC started on 17 June 2000. The conference created six thematic committees: the Charter Committee, the Economic and Social Affairs Committee, the Education Committee, the Security Committee, the Special Status of Mogadishu Committee and the Agriculture and Fisheries Committee. After a month of deliberations in the committees and in plenary sessions, the conference adopted the Transitional National Charter, a form of constitution, for a three-year transitional period to be followed by general elections.

7. The Charter recognizes regional autonomy based on the 18 pre-existing regions of Somalia. It outlines the various governmental structures, such as the legislative, the executive and the judiciary and allocates 25 parliamentary seats for women and 24 for minorities out of a total of 245. In article 3, the Charter reiterates the adherence of Somalia to international treaties to which it is a party and stipulates the supremacy of law. In article 4, it "acknowledges" the Universal Declaration of Human Rights and affirms Somalia's intention to be bound by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to both of which Somalia is a party. In articles 5 to 10, it enumerates the citizen's various rights and freedoms including the right to life, freedom of movement, freedom of association, the right of political participation, freedom of the press, the right not to be arrested or searched except in accordance with the law, the rights to legal representation (including the choice of one's attorney) and the right to and sanctity of private property. It also contains non-discrimination and equality before the law clauses. These same rights are accorded to aliens resident in Somalia. Other fundamental principles such as the separation of powers, the independence and autonomy of the judiciary and the right to basic education figure prominently in the Charter. However, the Charter does not prohibit the infliction of the death penalty and makes the non-discrimination clause conditional on compatibility with Islamic law and "acceptable moral values" (art. 6). Finally, the Charter calls for the creation of an autonomous human rights commission.

8. In August 2000, the 245 members of the Transitional National Assembly (TNA) were elected on the basis of clan nominations and quotas. The TNA met for the first time on 13 August 2000 and subsequently elected its Speaker, Mr. Abdalla Deerow Issaq. On 26 August, the TNA elected Mr. Abdikassim Salad Hassan President, from a shortlist of 16 candidates. Mr. Hassan was inaugurated on 27 August in a ceremony attended by the Presidents of Djibouti, Eritrea, the Sudan and Yemen and the Prime Minister of Ethiopia. The ceremony was also attended by diplomats accredited in Djibouti, senior representatives of the Governments of France, Italy, Kenya, the Libyan Arab Jamahiriya and Saudi Arabia, as well as senior representatives of the Organization of African Unity, the League of Arab States, Intergovernmental Authority on Development (IGAD) and the United Nations office in Somalia. The Representative of the Secretary-General to Somalia, Mr. David Stephen, made an address at the inauguration ceremony on behalf of the Secretary-General.

9. Between September and November 2000, the newly elected President visited several countries and participated in various regional and international events, including a ministerial meeting of the League of Arab States, the United Nations Millennium Summit and the United Nations General Assembly, the Summit of the League of Arab States, the Summit Conference of the Organization of Islamic Conference and the IGAD Summit. In October, he appointed Mr. Ali Khali Galaydh Prime Minister. The new Prime Minister

appointed an all-male cabinet of 22 ministers from all the major clans. Subsequently, he appointed 45 assistant ministers, five ministers of State and a governor for the Banadir region. Of these, four were women. The Transitional National Government (TNG) and the TNA moved to Mogadishu in October.

10. Despite the apparent success of the SNPC, it remains incomplete as important political forces inside Somalia do not recognize the TNG and remain opposed to it. These forces are the government of "Somaliland," the administration of "Puntland", the leader of the "Rahanweyne" Resistance Army (RRA) Shatigudud, (with strong support from some segments of the RRA power-base, the Digil/Mirifle) and the various Mogadishu-based faction leaders (including Hussein Aideed, Musa Sudi Yalahow, and Osman Ali Atto).

II. HUMAN RIGHTS DEVELOPMENTS

11. The Djibouti peace initiative sparked vigorous political activism inside Somalia leading to a sharp polarization of those for it and those against it, including the de facto authorities of "Somaliland" and "Puntland". Most of the human rights violations that have occurred over the past year stem either directly or indirectly from this polarization. The next section of this report will highlight the most significant human rights developments in the various Somali regions during the past year.

A. North-west Somalia

12. Some human rights violations were committed against participants in the Arta Conference, for example the arrest and forcible attempt at deportation of 25 persons who were on their way to Djibouti for the peace process, which was sharply criticized by the former Independent Expert on the situation of human rights in Somalia, Ms. Mona Rishmawi. She issued a press statement on 10 July 2000 in which she called attention to the threats of punishment made against people who wished to attend the peace meeting by the administrations in "Somaliland" and "Puntland." She also raised the issue of the shooting of a "Somaliland Colonel" who was allegedly assassinated for daring to oppose the forcible deportation of Majerten leaders. This received wide publicity.

13. On 11 September 2000, the "Somaliland" administration arrested, in Berbera, *garad* Abshir Salih, a Dulbahante clan chief from Sool region, following his return to "Somaliland" after participating in the Arta Conference. Although the parliamentary legislation that made participation in the Arta Conference a crime of high treason and the subsequent security decree creating the "national security committee" were both in effect, the "Somaliland" authorities decided to charge the *garad* under provisions of the Somaliland Penal Code and brought him to trial before the regular regional court of Berbera. Also, the administration appointed a defence attorney for the accused and allowed him to choose a second one. Both defence counsels were paid by the "Somaliland" authorities. Furthermore, Mr. Egal, President of "Somaliland", instructed his "minister of justice" to invite the OHCHR human rights officer based in Somalia and the international media to attend the trial, which lasted for three days. The OHCHR human rights officer accepted the invitation and observed the trial proceedings. After a hearing that

lasted for three hours only, the accused was found guilty of high treason and sentenced to seven years' imprisonment. On 3 October, a delegation of "Somaliland" officials visiting Boohodle faced demonstrations protesting the arrest and conviction of *garad* Abshir Salih. Mr. Egal pardoned the *garad* after he had spent 35 days in prison.

14. Similarly, on 11 November, the Edigale blocked roads to the Hargeisa Airport and staged demonstrations in protest at the arrest of their Sultan, Mohamed Abdul Khadar, and four companions at Hargeisa Airport on 10 November. The group was arrested upon return from Dubai after having attended the Arta Conference. The demonstrations were reportedly timed to coincide with the arrival of Mr. Egal from Ethiopia. The police reacted against the demonstrators and three persons were killed in the melée - one policeman and two civilians. Reports indicate that between 40 and 70 demonstrators were arrested. It should be noted that the "Somaliland" authorities fought a civil war with the Edigale from 1994 to 1996. Earlier on, Mr. Adan Dahir Obsiye, a civil society activist from Borama, was detained for allegedly participating in the Arta Conference. He was never charged or brought before a court of law and was subsequently released.

15. Attacks against humanitarian aid workers and United Nations staff continue to be a source of concern. GTZ staff member Dieter Krasemann was killed in Burao on 6 June 2000. An assailant stabbed him in the throat while he was sitting in a rented car outside a hotel. It appears that the perpetrator was not of sound mind and that neither GTZ nor Mr. Krasemann were specifically targeted. The "Somaliland" authorities arrested the suspect and requested an external psychiatric evaluation. The case is still pending before the "Somaliland" courts. In Hargeisa, a death threat letter was delivered to the chief of the UNHCR office on 10 July. The "Somaliland" authorities requested that the United Nations withdraw the staff member for some time. On 13 November, in Boroma, an assailant fired on the chief of the international NGO, COOPI, and a visiting group. No one was hit and the shooter was arrested. A female Somali threatened an international female staff member of COOPI with a knife while visiting a water project in Dolow. Residents later attacked her throwing stones. Fortunately, she escaped unharmed.

B. North-east Somalia

16. On 23 March 2000, about 2,000 people demonstrated in the seaport city of Bossasso in support of the Djibouti peace initiative. Police fired live bullets at the demonstrators, wounding nine people and killing one person. The "Puntland" authorities claimed that those shot were trying to vandalize private property. However, eyewitness reports indicated that the demonstration was peaceful and there was no attempt to destroy or loot private property. The demonstration took place at a time when the Government was starting to voice its opposition to the peace initiative.

17. On 13 July 2000, fighting erupted between the Habr Gedir and the Majerten sub-clans at the livestock exchange market in the city of Galcaiyo. The fighting spread and at one point the mayor of the city attempted to intervene. However, he and his entourage were fired upon and the intervention failed. Between three and six persons were reported killed and an unknown number wounded on the Mijertain side and eight or nine killed and an unknown number wounded on the

Habr Gedir side. Fighting also broke out between the Dulbahante and the Majerten Omar Mahamud some 40 kilometres north of Galcaiyo in the town of Baccad Weyne. Political differences were alleged to be the reason for this outbreak, which caused an undisclosed number of casualties.

18. On 2 February 2001, the Puntland police opened fire on a demonstration in the city of Bossasso, killing a woman and injuring an unidentified number of people. The demonstrators, who were waiving the Somali national flag, were reportedly protesting against inflation. Subsequently, the "Puntland" authorities arrested 15 persons. Local human rights organizations claimed that these persons were subjected to severe torture. They were released on 17 February without charge or trial.

19. On 10 February 2001, a boat reportedly smuggling 131 Somalis to Yemen capsized off the coast of Yemen. Fourteen persons drowned and 33 were missing. Similar incidents have occurred in the past and have not been addressed by the local authorities.

20. United Nations security reports indicate that attacks against aid workers and agencies are on the rise. For example, on the night of 15 July 2000, the Africa70 Education Office in Bossasso was looted. Unconfirmed reports also indicate that the UNDP Somalia Rehabilitation Programme office in Iskushuban was looted at some point during that same week. In December 2000, a vehicle belonging to the international NGO, CARE, carrying an international female consultant was stopped at a road-block in Galgalla, near Gardoe. Shots were fired and an abduction was attempted, but failed. The vehicle was finally able to safely evade the ambush, but an unidentified number of Somalis were killed.

C. Southern Somalia

21. On 17 October 2000, RRA militia in Baidoa broke up pro-TNG demonstrations initiated by the traditional Rahanweyne leadership. There was some firing into the air, but no casualties were reported. However, on 4 November, the RRA arrested 17 traditional Rahanweyne leaders who supported the TNG. This led to two shooting confrontations between RRA militia on the one side and Rahanweyne elder-controlled militia on the other. Two deaths were reported. Several other Rahanweyne elders reportedly ran into the bush. Those arrested were released one week later.

22. On 6 January 2001, the TNA Speaker, Abdalla Derow and the TNG Minister of Education visited the Speaker's home district of Tieglow in the Bakool region. RRA militia attacked them and their escort. This attack resulted in nine persons being killed, and the Speaker and the Minister of Education being forced to flee for their lives on foot. Both later safely returned to Mogadishu. Also at the beginning of January, a firefight erupted outside Baidoa between RRA militiamen supporting the TNG and those opposed to it. Six persons were reported to have been killed and an unidentified number wounded. The RRA authorities disconnected telephone services in Baidoa (including those of the United Nations and NGOs) for two days. It was believed that the RRA authority was worried about information leakage.

23. Attacks against aid workers and agencies are exceptionally numerous in this region. On 6 May 2000 a United Nations Common Air Service (UNCAS) aircraft and its crew were threatened by militia demanding landing fees. After discussion between both parties, the aircraft left the airport without paying the landing fees. On 7 May the World Food Programme (WFP) office compound in Baidoa was forcibly entered by a group of 12 Somalis. RRA militia intervened and, together with the WFP guard, ejected the group. There were no casualties or looting during the incident. On 23 August 2000, firing around an UNCAS plane taxiing on the ground after landing at Gabahare forced the aircraft to abort its mission and take off immediately. As a result, Gabahare was placed off limits to UNCAS flights and United Nations ground travel. On 7 September 2000, a group of armed militia forcefully entered the WFP compound in Baidoa seeking employment. At the request of United Nations security officials, the RRA and their militia ejected the group without fighting. The members of the group were reportedly arrested. Finally, on 13 December 2000, an armed group of RRA militia, allegedly dispatched by RRA Chairman Shatigudud, held up the UNCAS aircraft at Baidoa and extorted $300 as landing fees for three flights.

D. Central Somalia

24. Central Somalia, especially the town of Merka, remained off limits to the United Nations community for most of 2000. It was therefore not possible to monitor human rights developments at all times. The general human rights situation is tense and is characterized by inter-clan competition and warfare leading to loss of life and displacement of populations. For example, in early July 2000, clashes between the Gare and Jida sub-clans led to the displacement of over 1,000 persons. Later that month an angry crowd lynched a young boy from the Bantu minority clan, who worked as a water pump attendant and was suspected of stealing the pump. On 22 July, a land dispute between the Reer Maadle and Maamiye sub-clans led to an outbreak of fighting in the vicinity of Bulo Burti. Five persons were reported dead and an unidentified number wounded. In Belet Weyne fighting erupted on 7 August between Hawadle and Jejele militias after a prominent member of the Hawadle community was shot dead. Three other people were killed and four wounded in the fighting.

25. Attacks against aid workers and installations continued unabated. On 11 April 2000, the self-styled Shariah courts' militia arrested Dr. Jeylani, a national WHO officer in Merka, because he refused to provide unnecessary medical supplies to prisoners held in the Shariah courts' prison in Merka. His assessment had been that they required drugs for the treatment of and protection against malaria only, and that other drugs were not required. The Shariah courts' leaders were angered by this decision and arrested the WHO officer. However, local leaders obtained his release after intercession. On 15 April, a CARE food convoy was attacked at a militia checkpoint on the Brave-Merka road allegedly manned by the Biymaal sub-clan. A group of militia took over the InterSOS hospital in Jowhar on 12 May and looted valuable medical equipment and drug supplies. There were neither casualties nor shootings during the incident. On 8 June, a European Community Humanitarian Operations (ECHO) aircraft was fired upon in the vicinity of Meled and struck on the wing by an unknown gunman as it was approaching Merka airport to land. On 14 June, in the aftermath of that attack, the United Nations received a letter from the Biyamaal Resistance Movement (BIREM) threatening more of the same treatment to any international aircraft using Merka airfield. Neither the Merka nor the Melled committees of elders have satisfactorily pursued justice in this case. On 15 June, it was reported that a

grenade had been tossed into the compound of the international NGO COSV in Merka. There were fortunately no injuries. At the time of the incident, COSV Staff were preparing for the Annual Day of the African Child celebrations when a crowd of religious extremists appeared outside the compound. In Merka, Biyamaal militia attacked the compound of the international NGO Water for Life (WFL) on 12 July. One WFL security guard was critically wounded. Two United Nations security officers were dispatched to Merka on 19 September in order to conduct a security assessment. Following initial discussions, they retired to the WHO guesthouse. About midnight, six to eight gunmen assaulted the guesthouse, and a 20-minute firefight ensued between them and the WHO security staff. The group was not able to force entry. The following day, the two United Nations security officers were evacuated. On 9 November, the former UNICEF compound in Dusa Mareb was attacked by disgruntled job seekers. No casualties were reported.

E. Mogadishu

26. The city remains divided into fiefdoms controlled by the TNG and a variety of faction leaders. Inter-faction clashes often lead to civilian casualties and loss of property. The following cases illustrate the lawlessness prevalent in the city. On 2 April 2000, militia clashed in the port of El Maan, located north of Mogadishu. Three persons were killed and a Toyota Landcruiser was looted from the port staff. In another incident on the same day, Agonieh militia rushed into a pharmacy in the Yaqshid district and murdered the owner. Also on 2 April, a fight amongst Mohamed Qanyare's militia in the Bakara Market area led to a shooting incident that claimed the lives of three persons and wounded another four. Fierce inter-clan fighting between the Eli and Reer Matan of the Abgaal sub-clans was reported in Mogadishu on 7 May; 20 people were reported killed and another 30 wounded in the fighting. Stray shots resulted in the death of 2 bystanders and the wounding of another 15. On 14 July, clashes involving the militias of Murusade, the Ayr and the Daud sub-clans at three different locations in the city left 10 persons dead and perhaps as many as 25 wounded. On 17 July, it was reported that, over a period of 48 hours, some 10 clan-owned public vehicles had been fired upon and looted by rival militias of the Abgaal, Habr Gedir and Murusade sub-clans. During the same period, it was reported that there had been a rash of assassinations in which the victims' bodies had allegedly been left in public places for public viewing. On 18 October, General Yussuf Talan was assassinated on the street near the Sahafi Hotel. Four to six gunmen carried out the attack; they were reportedly later observed entering Osman Ato's compound in the city. The significance of this incident is that Talan had reportedly just been appointed as chief of the TNG militia demobilization effort for Mogadishu, that he was killed in an area where both parliamentarians' and the President's homes were located, and that he was killed while negotiations were continuing between the TNG and the opposition elements in Mogadishu. On 13 November, a TNA member of Parliament, Hassan Ahmed Elmi, was assassinated in front of his home in the Medina district of Mogadishu. Muse Sudi, who retained tight control of the Medina district, denied that the technical and militia who perpetrated the incident were from his group. Another member of Parliament, Mohamed Dualle Haaf, was ambushed on 17 November. The ambush was reportedly conducted by unidentified Sa'ad and Ayr militia. Haaf escaped unharmed from the ambush, which left 7 killed and 10 wounded. On 15 February 2001, fighting broke out between Murusade and Abgaal militias. Two truck-mounted guns and approximately 30 militiamen were involved. The clash lasted for about 20 minutes and resulted in one militiaman and four bystanders being wounded.

27. Aid workers, their premises and other properties are routinely attacked in Mogadishu. The following are a few examples of such attacks. On 14 April 2000, Mohamed Qanyare's militia allegedly struck a UNDP leased vehicle. A non-staff member who was a passenger in the vehicle was slightly injured by shattered glass. On 3 May unidentified gunmen killed a national staff member of the international NGO Action internationale contre la faim (ACF) while on duty. Also, on 26 July, 5 to 10 technicals supported by up to 50 Sa'ad militia attacked the ACF compound in South Mogadishu. Osman Ato reportedly ordered this attack. Two staff members, one from the United Kingdom and one from France, were taken as hostages and kept for almost two months. They were released after the International Committee of the Red Cross (ICRC) intervened on their behalf. On 28 July, bandits ambushed a public transport vehicle carrying Dr. Salad Jumale Osoble of FAO on the Bale Dogle-Mogadishu road near Wanle Weyne. Dr. Salad and three others were wounded in an exchange of gunfire and Dr. Salad was rushed to hospital in Mogadishu suffering from a gunshot wound in the thigh, the bullet lodged against his hipbone. In another incident, a local doctor working at the Mount Sinai Clinic was kidnapped by militia in North Mogadishu and held for 12 hours before being successfully rescued. On 11 January, freelance gunmen from the Waesle clan opened fire at Forlino Hospital in North Mogadishu. Médecins Sans Frontières-Spain was about to establish a cholera treatment centre in the hospital. The freelance gunmen threatened that unless they were given jobs at the hospital, they would continue to disrupt the cholera treatment centre.

III. THE LATEST DEVELOPMENTS

28. On 19 December 2000, the United Nations Secretary-General submitted a detailed report to the Security Council on the situation in Somalia (S/2000/12/1). On 11 January 2001, the Council, in a presidential statement (S/PRST/2001/1), inter alia welcomed the TNG efforts to promote national reconciliation; urged all political groups in the country, particularly those which have remained outside the Arta peace process to engage in dialogue with the TNG; condemned attacks by armed groups on civilians; condemned the illegal supply of weapons; and reiterated to all States their obligation to uphold the arms embargo imposed in accordance with Council resolution 733 (1992) of 23 January 1992. In response to the Secretary-General's readiness to establish a trust fund for peace-building in Somalia, the Council requested him to submit a proposal for a peace-building mission for the country. The United Nations Political Office for Somalia is currently preparing a preliminary draft for such a mission in consultation with United Nations country team members.

29. The latest OHCHR project for Somalia addresses two needs: (a) to mainstream human rights in the programmes and projects of the United Nations Country Team members by the Senior Human Rights Adviser working directly under the auspices of the Resident/Humanitarian Coordinator; and (b) to provide technical advice to UNDP in its law and governance related programmes and projects in general and the Somali Civil Protection Programme in particular. In accordance with the project document, OHCHR provides a senior human rights adviser, while UNCU, the United Nations Coordination Unit and UNDP provide logistical and secretarial support to the adviser. The High Commissioner for Human Rights and the Resident/Humanitarian Coordinator signed this project in December 2000.

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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Haiti

Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, independent expert, in accordance with Commission resolution 2000/78, para. 21

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Summary

In this report, the independent expert supplements the report submitted on 25 October 2000 to the General Assembly (A/55/335) and includes recommendations whose implementation will, in the case of some of them, require the combined efforts of the Haitian authorities and the international community.

The political polarization in Haiti is bound to cause consternation among those who sincerely wish to see that country finally break out of its infernal cycle of violence and indescribable poverty. The independent expert welcomes with interest the pledge made by President-elect Jean-Bertrand Aristide after his meetings with Mr. Anthony Lake, the envoy of President Clinton. It should be pointed out that the tense situation prevailing in Haiti is related essentially to the manner in which the elections of 21 May 2000 were conducted and, more specifically, to the method of calculation used in the senatorial election.

In view of the dangers facing the Haitian nation, the independent expert appeals to all the players to reach agreement on the main issues. After all, what unites them is far more important than what divides them. Each of the parties will therefore have to make certain concessions in order to enable this country, the poorest in the northern hemisphere, to set to work again on eradicating its many ills, which include social inequalities, exclusion, corruption, poverty and destitution, intolerance, illiteracy, drug trafficking, the poor public health situation, the egoism of the rich, the lack of a culture of democracy, child mortality and AIDS.

As he stated in his report to the General Assembly, the independent expert remains convinced that the political polarization creates a breeding ground for daily violence, including hold-ups, murders, fatal woundings and burglaries.

The independent expert deplores the deterioration of the system for the administration of justice. This is manifest in the politicization of the police, arbitrary arrests, prolonged detention without trial, the climate of violence and also the deplorable health conditions in the prisons. The independent expert nevertheless notes some progress, including a number of successful measures by the police to combat crime, the trial relating to the events of Raboteau and the efforts of the authorities to reform the legislative and judicial system in order to lay the foundations for a State governed by the rule of law which seeks to protect the interests of the majority of the Haitian population.

With regard to international cooperation, the independent expert is of the view that cooperation with Haiti should be planned as part of a strategy covering the long term and not, as has hitherto been the rule, the short term. The international community should pursue technical cooperation and assistance programmes in such fields as the administration of justice, human rights and prisons.

Aside from the monitoring of human rights, the independent expert believes that the United Nations should place more emphasis on capacity-building. One of the objectives here is to strengthen the commitment to democratic values. The Office of the High Commissioner for Human Rights (OHCHR) should undertake a programme of technical cooperation and assistance particularly for capacity-building inter alia in State institutions, the Office of the Ombudsman (OPC), the Judges School, the administration of justice and civil society.

Introduction

1. At its fifty-sixth session, the Commission on Human Rights, through its resolution 2000/78, endorsed by Economic and Social Council decision 2000/277, invited the independent expert to report to the General Assembly at its fifty-fifth session and to the Commission at its fifty-seventh session on developments in the human rights situation in Haiti (resolution 2000/78, para. 21). In implementation of that resolution, the independent expert carried out two missions to Haiti, the first from 27 July to 8 August 2000 and the second from 13 to 20 December 2000. He also visited Port-au-Prince from 25 to 29 September 2000, at the invitation of the International Civilian Support Mission in Haiti (MICAH) and the Haitian Ministry of Justice, to contribute to the first conference on reform of the justice system; he took that opportunity to attend the opening of the trial relating to the events of 1994 in the Gonaïves district of Raboteau.

2. During his visits to Haiti, the independent expert met with a large number of politicians and members of civil society. The public figures with whom he met included Mr. René Préval, President of the Republic; Mr. Jacques-Edouard Alexis, Prime Minister; Mr. Jean-Bertrand Aristide, President-elect of the Republic and leader of the Mouvement Fanmi Lavalas; Ms. Mirlande Manigat, Senate candidate; Mr. Fritz Longchamp, Minister for Foreign Affairs; Mr. Camille Leblanc, Minister of Justice; Mr. Florence Elie, Assistant to the Ombudsman; Mr. Gérard Pierre Charles, coordinator of the Organisation du peuple en lutte (OPL); Mr. Jean Bien-Aimé, Minister of National Education; Mr. Evans Paul, President of the Espace de concertation; leaders of the Mouvement catholique pour une nouvelle Haïti (MOCHRENA); Mr. Hubert De Roncay, leader of the Mouvement patriotique pour le sauvetage national (MPSN); Mr. Renaud Bernardin of the Parti Louvri Baryè (PLB); representatives of Convergence démocratique; Mr. Willy Lubin, Director of the judges school; Ms. Lise Pierre Pierre, Chief Judge of Port-au-Prince; Mr. José Pierre-Louis, Public Prosecutor of Port-au-Prince; Mr. Yvon Neptune, President of the Senate; Mr. Pierre Denizé, Director-General of the Haitian National Police; members of the Provisional Electoral Council (CEP) and members of the judiciary. The independent expert wishes to express his gratitude for their constructive cooperation.

3. He also had highly productive meetings with Mr. Alfredo Lopes Cabral, the Representative of the Secretary-General; Mr. Oscar Fernandez-Taranco, Resident Representative of the United Nations Development Programme (UNDP) and his deputy; Ms. Diene Keïta, Chargé d'affaires of the Embassy of Venezuela; representatives of the United Nations Food and Agriculture Organization (FAO); Mr. Tschicaya, of the United Nations Educational, Scientific and Cultural Organization (UNESCO); Mr. Bernard Hadjadj, of the United Nations Children's Fund (UNICEF); Mr. Rodney Philips, and Ms. Grace D'Almeida and Mr. Jean-Paul Lupien, officers in charge of the UNDP "Justice" and "Prisons" projects, respectively. The independent expert held working meetings with staff members of the International Civilian Support Mission in Haiti (MICAH), with representatives of various associations of civil society, including the Plateforme des organisations haïtiennes de droits humains (POHDH); Mr. Pierre Espérance, President of the National Coalition for Haitians' Rights (NCHR); the Syndicat d'enseignants (UNNOH); non-governmental organizations (NGOs) concerned with human rights and women's organizations. He also heard the views of Haitian men and women of various social classes. The independent expert particularly appreciated his meeting, which was very rewarding from all

points of view, with the ambassadors of the Group of Friends of the Secretary-General for Haiti (Argentina, Canada, Chile, France, the United States of America and Venezuela) joined by Spain and the Dominican Republic. He would hereby like to thank them warmly for their concern and understanding.

4. The independent expert supplements here the report submitted on 25 October 2000 to the General Assembly (A/55/335), including recommendations whose implementation will, in the case of some of them, require the combined efforts of the Haitian authorities and the international community.

5. At the time of the submission of this report to OHCHR on 4 January 2001, the deterioration of the political climate was a cause for fearing the worst as regards the future of human rights in Haiti. One need only refer to the decision taken on 3 January 2001 by Convergence démocratique to proceed with its plan to set up its own government, on 7 February 2001, in the place of Mr. Jean-Bertrand Aristide, who was elected on 26 November 2000 following a poll boycotted by the 15 main opposition groupings. In response to this decision by Convergence démocratique, the Prime Minister warned the opposition not to make any attempt to destabilize the country and indicated that he was ready to take all possible steps to prevent any disorder. He acknowledged the mobilization of the popular organizations wishing to counter the moves by the opposition. As can be appreciated, the political polarization in Haiti is bound to cause consternation among those who sincerely wish to see the country finally break out of its infernal cycle of violence and indescribable poverty. The independent expert welcomes with interest the pledge made by President-elect Jean-Bertrand Aristide after his meetings with Mr. Anthony Lake, the envoy of President Clinton; that pledge confirms what Mr. Aristide told the independent expert on 20 December 2000 at his residence in Tabarre (paragraph 15 below reproduces part of this pledge given in a letter addressed to President Clinton). It should be pointed out that the tense situation prevailing in Haiti is related essentially to the manner in which the elections of 21 May 2000 were conducted and, more specifically, to the method of calculation used in the senatorial election.

6. As he stated in his report to the General Assembly, the independent expert remains convinced that the political polarization creates a breeding ground for daily violence, including hold-ups, murders, fatal woundings and burglaries. This dark picture is worsened by the abject poverty of the most disadvantaged classes, who have suffered so much and have continued to face problems of access to drinking water, health care, housing, education and, in particular, to the justice system and the law - in short, to legal services. There is an urgent need to defuse the tension and find a solution that ensures the rule of law and is consistent with the aspirations of the Haitian people. These people should be the first concern of all the parties involved, including the international community.

7. In view of the dangers facing the Haitian nation, the independent expert appeals to all the players to reach agreement on the main issues. After all, what unites them is far more important than what divides them. Each of the parties will therefore have to make certain concessions in order to enable this country, the poorest in the northern hemisphere, to set to work again on

eradicating its many ills, which include social inequalities, exclusion, corruption, poverty and destitution, intolerance, illiteracy, drug trafficking, the poor public health situation, the egoism of the rich, the lack of a culture of democracy, child mortality and AIDS.

8. This report, accompanied by recommendations, focuses on the political context, civil liberties, prison conditions, the Haitian National Police, the judicial system and international cooperation. It supplements and updates the report submitted to the General Assembly in October 2000 (A/55/335), which, in addition to the problems raised in this report, deals with issues relating to the politicization of the police, the lack of a culture of democracy, impunity, judicial reform, the question of rural populations and the right to development, the right to education and the situation of Haitian migrants in the Dominican Republic.

I. POLITICAL CONTEXT

9. The crisis resulting from the elections of 21 May 2000 worsened with each passing month owing to the lack of consensus on a formula to deal with the crisis and notwithstanding the efforts made by the Organization of American States (OAS) pursuant to the resolution adopted by its Permanent Council on 4 August 2000. In that resolution, OAS decided to accept the Haitian Government's invitation and send a mission led by the OAS Secretary-General, and on which the Group of Friends of the United Nations Secretary-General for Haiti would be represented, to identify, together with the Haitian Government and other sectors of the political community and civil society, options and recommendations for resolving, as expeditiously as possible, difficulties such as those that had arisen from the differing interpretations of the Electoral Law, and for further strengthening democracy in Haiti.

10. OAS Secretary-General César Gaviria visited Port-au-Prince in mid-August in this connection, but without much success. There was a second mission, led by Mr. Luigi Einaudi, OAS Assistant Secretary-General, to try to facilitate dialogue between Fanmi Lavalas and the opposition, President Préval having undertaken to implement any accord resulting from the dialogue provided it did not violate the Constitution or delay the inauguration of a new president on 7 February 2001. That mission was no more successful than the first because of a lack of direct dialogue between the two parties.

11. With a view to strengthening democracy in Haiti, OAS again sent Mr. Einaudi to the country and, during the week of 13-21 October 2000, he eventually managed to organize direct talks. There was reason to be hopeful, but a consensus was not forthcoming, as the dialogue foundered on the issue of the 21 May elections. Most of the opposition parties demanded the annulment of the 21 May election result, the institution of a new CEP, the resignation of President Préval and the establishment of a provisional government. These demands were not, however, accepted by the Government and Fanmi Lavalas. As a result, the opposition grouping in Convergence démocratique decided not to take part in the presidential and senatorial elections of 26 November 2000. This nevertheless did not prevent the Government from organizing the elections for that date, when the turnout was 60 per cent according to CEP, 30 per cent according to the observers present, 10 per cent according to some journalists, and only 2 per cent according to the opposition groups which did not take part in the elections. Of course, the presidential election was won, without any surprise, by the candidate Jean-Bertrand Aristide. Equally as predictable was the reaction of the opposition groups within Convergence démocratique. This

raised again the spectres of dictatorship, a coup d'état and other forms of government from which Haitians have suffered so much. The paramount need, therefore, was to exorcise the perceived demons and pursue the initiative of the Clinton Administration, only a few weeks before the arrival of the Bush Administration. For his part, the independent expert hopes that the pledge which Mr. Anthony Lake, the special envoy of President Clinton, obtained from President-elect Jean-Bertrand Aristide will be seen as a guarantee of the sincere wish to bring together all Haitians in a genuine endeavour to institutionalize democracy, after correcting the many serious irregularities that marred the electoral process of 21 May 2000.

12. As the Secretary-General of the United Nations pointed out in his report to the General Assembly:

> "While not backing the opposition call for the complete annulment of the elections, civil society organizations - private sector groups, churches, labour unions, intellectuals - all urged the authorities to address the serious electoral irregularities [of 21 May 2000] in order to avoid exacerbating the political crisis and jeopardizing much-needed international assistance." (A/55/618, para. 5)

Surely Haiti must be given a chance to deal with its problems other than through bloodshed and chronic instability, an outcome that would seem to be preferred by some belligerent forces reportedly belonging to Fanmi Lavalas, but also by some sectors that want to perpetuate the blatant inequalities, not to mention the drug barons who are profiting extensively from a situation of institutional weakness to pursue their criminal activities with impunity.

13. On 29 December 2000, a Washington Post editorialist offered an answer:

> "Many in Washington will no doubt be loath to do that - they see Mr. Aristide as a populist demagogue well on his way to creating a one-party State. But Mr. Aristide, who has dominated Haitian politics while in and out of office for a decade, remains the country's only genuinely popular leader and perhaps the only one who, if he chose to, could implement the economic and political reforms the country desperately needs. The failure of his government would likely result in another massive wave of refugees setting out for Florida - like the one that prompted the Clinton administration to intervene in Haiti in the first place. Whether Mr. Aristide will carry out his pledges to Mr. Clinton is certainly questionable. But the Bush administration should encourage him to do so - and be prepared to respond positively if he does."

The independent expert shares this view and encourages not only the Bush administration but all bilateral and multilateral donors to give Haiti a chance to put an end to the political polarization that is currently one of the most serious threats to the strengthening of democracy and the rule of law. The Secretary-General of the United Nations is perfectly right to say that "a disturbing element of this polarization is the widely held perception among opponents of Fanmi Lavalas - shared by many former supporters - that the party might establish a dictatorial and repressive regime if, as is widely expected, Mr. Aristide once again assumes the presidency. On the other hand, it is very evident that Mr. Aristide enjoys the loyalty of broad sectors of the urban and rural poor. The disinclination of the parties to work towards a compromise is a fundamental cause of the polarization." (A/55/618, para. 35)

14. The independent expert nevertheless maintains his position that CEP has not strictly applied articles 53 and 64 of the Electoral Law of 19 July 1999. The CEP "decision" was based more on equity than on law. Furthermore, it is clear from the CEP explanatory statement dated 30 June 2000 that "CEP, as the sole authority vested with the power to apply the Electoral Law, made a good-faith effort to find a method corresponding as closely as possible to the spirit of the law". An appeals body, had one existed, would probably have reversed the CEP "decision" on the grounds that it was a violation of the Law. Immediately after his election, President-elect Jean-Bertrand Aristide commissioned a team of three jurists to find an equitable solution to the controversies arising from the elections of 21 May 2000. In response to a comment from the independent expert, the President-elect said that he was prepared to consider any opposition proposal for the appointment of three other jurists to join the three jurists who had answered his appeal "to serve our country in exceptional circumstances". The latter also stated that "encouraged by the civic commitment of several prominent figures we have met, we are convinced that the unanimous wish is to arrive at a lasting solution based on a sincere dialogue respecting the Constitution and the laws of the Republic". Jean-Bertrand Aristide has already made a pledge to Ambassador Einaudi (a) to respect the will of the electors by seeking, with the opposition, a political and legal solution to the controversies which arose from the 21 May elections, in particular the disputed seats in the Senate; and (b) to encourage the authorities to set up a commission to look into the question of those disputed seats. That commission would examine the method of calculation used for the senatorial elections of 21 May.

15. Does this mean that the President-elect would be prepared to put the disputed seats to the test again? This seems to be the belief of a number of observers, who even go so far as to say that 10 senators will "give up" their seats. It should be remembered that the report of the OAS Electoral Observation Mission officially questions 10 of the 19 senatorial seats contested in the legislative elections of 21 May 2000. But above all it must be hoped that all the players will take account of the new situation resulting from the pledge by the President-elect to safeguard what matters most. This pledge can be summarized in a few points:

- Hold run-off elections or take 'other credible' steps to rectify disputed Senate elections;
- Create a new electoral council that will involve opposition figures, to deal with voter fraud;
- Install 'technocrats' and members of the opposition in new government posts;
- Negotiate a deal for the repatriation of illegal Haitian immigrants in the United States;
- Allow United States Coastguard anti-drug forces to operate in Haitian waters;
- Establish a semi-permanent mission for the Organisation of American States to monitor human rights."

In the words of a senior United States administration official deeply involved in the negotiations that led to the President-elect's concessions, "there is now a real opening for the opposition to work on resolving political issues in Haiti".

II. CIVIL LIBERTIES AT RISK

16. What has become known as the Pliché affair, from the name of a town in the South, is so serious that the independent expert has informed the President-elect and the President of the Senate that it is essential to clear the matter up completely, by publishing the results of the Chamber of Deputies commission of inquiry regarding the affair and taking all necessary steps to avoid any repetition of such incidents in the future, if the facts of the case are proved. Without prejudging the issue, the independent expert has cross-checked the information and confirmed the results of an independent inquiry conducted by the Plate-forme des organisations haïtiennes des droits humains (POHDH) and the National Coalition for Haitians' Rights (NCHR) into the events reported by the Pliché parish priest, Father Yves Edmond. What happened at Pliché? It is simplest to reproduce the account of the parties in dispute as they are given in the POHDH and NCHR reports.

17. First, there is the account of two witnesses interviewed in Pliché, the parish administrator, Mr. Faustin Olivier, and Ms. Pascale Pierre, both members of the Association Tourisme Alternatif Sud (ATAS) and victims of the raid organized by a number of elected officials of the area. On 25 November 2000, at around 4.15 p.m., a unit of heavily armed civilians burst into the courtyard of Pliché church. Those identified included Jean Candio, representative for St-Louis du Sud/Cavaillon; Martel René, chief mayor of Cavaillon; Bailly Vincent, second member; Reynold Candio, employee of Téléco de Bonne-Fin; and Sanon Toussaint, member of the Cavaillon commune electoral board. There were also eight other persons armed with Uzi sub-machine guns, 12-calibre rifles and 38-calibre revolvers. People call these the "Lavalas ghosts". In the church courtyard, one of those armed with an Uzi ordered the church to be closed and pointed his weapon at a group attending a meeting on tourism in the church. He told them to stand up and put their hands on their heads and poked them with his gun, kicked them and angrily knocked over benches, cases and other objects. He then told them to leave the church. The priest refused, so he pushed him out by force. In the courtyard he told everyone to lie down on the ground. The priest again refused, saying that as parish priest he was responsible for the community and no one would make him lie on the ground. The other pointed his weapon at him, but the magistrate, Bailly Vincent, intervened and told him to let the priest remain standing. He then ordered everyone to be searched. After the search, the other magistrate, Martel René (first member), announced that festivals were forbidden in the town until after the elections and the church was to stay closed, and that Cavaillon church had been closed since Saturday at noon. He added that if the priest was foolish enough to turn a deaf ear, the unit would be back, but this time in far greater numbers, to kill and burn. They would reduce Pliché to ashes and it would be no more. They went off uttering such threats as: "Sa a se twòkèt la, chay la dèyè" ("This is just a warning, next time it will be worse"). Note that the feast of Sainte-Cécile, the patron saint of Pliché, always falls on the same day as the feast of Christ the King, the last Sunday in November, and members of ATAS took the opportunity to decentralize the ATAS meeting usually held in Cayes.

18. The other party's version, given by the magistrate, Bailly Vincent, who was present at the time, runs as follows: "We - that is, magistrate Martel René, representative Jean Candio and some of his security men, and myself - went to Pliché to ask the priest, as a favour, not to celebrate the feast of the patron saint on Sunday 26 November 2000 in view of the Presidential

and Senate elections. The priest refused to comply, even though there is a commune decree prohibiting the celebration of all such festivals in his parish. All this was done in an effort to prevent confrontation because the representative had discovered that certain people were going to disrupt the Pliché festival. Moreover the local radio station the priest runs - Voix Paysans Sud (VPS) - calls us contested judges, representatives and senators and he keeps distributing anti-Fanmi Lavalas tracts in the area. That priest is a liar."

19. One thing is clear, and that is that the facts are not contested. Armed men were definitely involved and flowerpots and benches were seen to have been tipped up and broken. The human rights NGO investigators asked some pertinent questions: for example, is it correct to speak of "asking a favour" when there was a commune decree prohibiting all activities that might disrupt the elections on 26 November 2000? Is it for magistrates or representatives to concern themselves with the running of the elections? Isn't that the task of the commune electoral board? Did the priest not have the right to hold opinions on political events in his country, in accordance with articles 28 and 31 of the 1987 Constitution? At first, there was talk of a meeting of terrorists; but, here again, is it the job of those elected on 21 May and 9 July 2000 to intervene in that regard? Are they doing the job of the police and the judiciary? Isn't that a violation of the 1987 Constitution, which guarantees freedom of association under article 31?

20. The independent expert will be following developments in this affair, which is an emotional one because it relates to fundamental freedoms: the freedom of association, the freedom of opinion and the freedom of expression. With regard to the freedom of expression, a number of journalists are said to be afraid to express their views freely because they have received anonymous threats. Their fear has been fuelled by the murder of the well-known journalist Jean-Dominique - killed despite his closeness to President Préval - and by the fact that his murderers are still at large. Some comfort can be derived from the arrest of a policeman in mid-December in connection with Jean-Dominique's murder. The expert once again urges the authorities to ensure that this crime, which is a crime against democracy and human rights, does not go unpunished. In late 2000, a radio station was obliged to suspend broadcasting for several weeks as a result of anonymous threats. It is time for the Government to send a very strong message to discourage those who would undermine the freedom of the press.

III. PRISON CONDITIONS

21. As of 30 November 2000, the prison population of Haiti numbered 4,373, of whom 20.14 per cent had been tried and 79.86 per cent were awaiting trial. The population is divided into those awaiting trial (3,252 men, 187 women and 72 minors) and those who have been sentenced (819 men, 26 women and 5 minors). More than half the prison population - 52.09 per cent - is in the National Penitentiary in Port-au-Prince. The situation in Haiti's prisons continues to deteriorate for many reasons, including the shortcomings of the criminal justice system, shortage of prison staff and lack of resources and infrastructure. An additional factor that has arisen recently is what could be called the issue of "deportees", of whom there are at present 300, including three women: almost all these "deportees" are hardened criminals who have served long sentences in American prisons. They were tried and convicted under United States law and completed their sentences in the United States. It emerged from several interviews the independent expert had with judiciary officials and NCHR representatives that

they were habitual offenders and considered dangerous by the United States Government, and that they had begun arriving in Haiti in June 2000, coming with or without their consent. The majority of them had been convicted of serious offences such as drug trafficking, armed robbery or assault. The independent expert has requested that this illegal and arbitrary detention should be terminated. The NCHR report on the general situation in Haiti's prisons describes an incident that occurred on 10 September 2000 in the National Penitentiary, which resulted in two of the deportees being seriously injured and one Prison Authority officer injured, locks being broken and metal grilles smashed. Was this an uprising of the deportees in an attempt to escape, as the Director of the National Penitentiary maintains? Or was it merely a peaceful attempt on the part of the deportees to show that they wished to meet prison officials? What is certain is that it was necessary to call in the Rapid Intervention and Law Enforcement Unit (CIMO) to restore order, but not without damage. Nevertheless, the Haitian authorities seem concerned at the deportees' situation, judging from their decision to establish a commission to look into it. The commission is to comprise: (a) a member of the Public Prosecutor's Office attached to the Port-au-Prince Civil Court; (b) a member of the Ministry of the Interior and Defence; (c) a member of the Ministry of Justice; and (d) an official from the Judicial Investigations Bureau (BRJ).

22. Meanwhile, BRJ is dealing with the case and has arranged the release of some 30 "deportees", who had been convicted for minor offences. As the independent expert reported to the General Assembly, this situation constitutes a violation of the International Covenant on Civil and Political Rights, article 14, paragraph 7 of which states : "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

23. It also emerged from interviews the independent expert had with officials of Assistance à la réforme pénitentiaire that the majority of the deportees claim to be unable to drink the prison water because it causes diarrhoea; a number of them stated that they arrived with medication for aggression, diabetes and anxiety, but that the medication was taken from their personal effects at the police stations and not given back.

24. The independent expert strongly recommends that deportees should be given a full medical examination by a doctor on arrival, so that essential medication can continue and cases of psychological disturbance can be detected.

25. Sanitary conditions in the National Penitentiary are far below the minimum standards. During October and November 2000, the Prison Board health service registered 14 deaths in the National Penitentiary. It noted nine main causes of death: deficiency anaemia in six cases, followed by tuberculosis and dysentery in four cases, with three deaths due to AIDS. Although the health service recognizes that causes may overlap, it admits that malnutrition is rife in the majority of detention centres. The situation would have been even worse had it not been for ICRC food aid to Haiti's prisons. This aid, which has saved a number of prisoners' lives, comes in four forms: either money given to the prison director to purchase fresh food for a balanced diet with around 2,300 kilocalories and 45-50 grams of protein per day per prisoner; fortified broth: 1,500 kilocalories per day for prisoners suffering from severe, advanced or slight

malnutrition; in-service training for cooks given by teachers from a Port-au-Prince catering school; direct aid: supply of dry produce (rice, peas, oil, corn, pickled herring and spices, etc.) if the prison stores were empty at the time of the visit.

26. The independent expert wishes to congratulate ICRC for its indispensable humanitarian work in Haiti, and urges donors to support it.

IV. THE HAITIAN NATIONAL POLICE

27. In his report to the General Assembly (A/55/335), the independent expert noted the tendency towards politicization of the police, as illustrated, inter alia, by the events that took place at Maïssade in connection with the 21 May 2000 elections. NCHR has condemned the sharp increase in acts of violence and in insecurity, which create a feeling of fear and anxiety. Everyone questions the professionalism of the police force, which quite often merely observe - like all other citizens - the uncontrolled banditry, threats, intimidation, destruction of property and storage and detonation of explosive devices, for example, go unchecked. NCHR has also condemned the police's laxity and failure to respond to a number of appalling events, and the arbitrary and biased nature of its interventions. The independent expert therefore strongly believes that the main issue to be addressed is the lack of a firm, decisive and prompt reaction by the police to an extremely complicated situation.

28. Two questions arise: what are the causes of the situation and how can it be put right? In his report to the General Assembly, the independent expert reported what he believed was a tendency towards politicization of the police. In the current context, it must be said that police action has become politicized in the extreme. Newly elected representatives wishing to establish their influence in their own area have no hesitation in exploiting the inflexibility of the police for political ends when they come up against an intermediate authority. It is therefore important for the Government to put forward a clear plan and a vision that will unite people around a feasible objective, such as public health, which itself includes a security objective. There is also an absolute need for an alternative for groups living in poverty or extreme poverty. The current alternative to poverty is either to take refuge in religion or to fall into crime.

29. From the institutional point of view, there can be no underestimating the extremely acute problem of human resources in Haiti, particularly within the National Police. The State is not capable of attracting competent personnel, who require adequate pay and working conditions. Nevertheless, despite the shortcomings of the National Police, it must be said that 5,800 police officers for an estimated population of 8 million does help to maintain order and respect for the law. The performance of the National Police can be viewed in various ways. An assessment of its handling of natural disasters, carnivals, etc., would certainly be generally positive. However, only when the people of Haiti look at the police and see how it leans towards the more negative aspects of the former Haitian army will it be possible to root out those tendencies one way or another.

30. The real problem lies in the area of law and order, which it has to be said has been politicized in the extreme. Ten murders were reported during the week the independent expert spent in Haiti and the week before there had been six. Such facts give cause for concern, but it is important to keep a sense of proportion, particularly when we find that, out of those six, two

were "Zenglendos" or gangsters killed by local people; three were killed by people in Cayes for sorcery; and one was a young woman decapitated by her mentally disabled brother. Another disturbing problem is the lack of gun control, which is exacerbated by the de facto United States embargo on arms exports to Haiti. Even an honest citizen who wishes to acquire a weapon is forced to resort to the black market. The origin of arms imports is still completely unregulated. This situation is having an impact on the Dominican Republic, where the growth of drugs trafficking and arms smuggling is greatly aided by the lack of controls in many Haitian ports. In view of the size of the problem of arms smuggling, the independent expert recommends the establishment of a semi-governmental or semi-private body that would be responsible for arms sales and therefore for introducing a system of regulation. The idea of expert ballistic evidence is something of a joke given that almost the entire stock of weapons in circulation is unregistered. The same applies to the judicial identity service, which is virtually non-existent, thus making criminal investigations extremely difficult. The point is sometimes made that it was easier to apprehend criminals in the Duvalier era. There is some truth in that, because as soon as a crime was committed, the district was immediately sealed off and interrogations, torture and beatings ensued. Fortunately, such practices are a thing of the past, although police officers at times still resort to brutal methods in their inquiries.

31. It is worth recalling here that, thanks to the outstanding work of the former Inspector-General of the National Police, Mr. Euscher Luc Joseph, and his team, a total of 635 police officers had been dismissed by the end of 1999. Of these, 407 were dismissed after inquiries by the Office of the Inspector-General, and the others by decision of the Office of the Director-General of Police. The clean-up of the National Police suffered a setback, however, with the departure of the Inspector-General, who resigned in April 2000 and is currently serving with the Permanent Mission of Haiti to the United Nations in Geneva. A successor had still not been appointed at the end of 2000. An acting Inspector-General has been appointed but clearly his authority can in no way compare with that of a permanent incumbent. Nevertheless, between 1 January and 16 November 2000, the Office of the Inspector-General opened 373 files, 76 of which concerned human rights violations. This figure may seem negligible compared with the statistics from previous years, but it must be remembered that the Office of the Inspector-General was virtually dormant between March and June 2000. Not until July was it fully operational again. It is regrettable that the Office does not have a higher profile and does not publicize cases of disciplinary action against corrupt police officers. What is even more regrettable is that those guilty of human rights violations are not being prosecuted. The Office of the Inspector-General seems to be reluctant to publish its statistics because the image of the police is sufficiently tarnished and it does not wish to demoralize the force even more. The independent expert has not been able to obtain data on dismissals during 2000. However, what is most worrying is the continued failure to prosecute, the Carrefour-Feuilles trial in 1999 being the exception that proves the rule.

32. Despite their shortcomings, the police are getting results, albeit modest in relation to the prevailing lack of law and order, particularly in Port-au-Prince. In the one week he spent in Port-au-Prince, the independent expert was informed of several murders, fatal woundings, injury, burglaries and other offences against the person or against property. The National Police report for 2000, prepared by its spokesman Jean Dady Siméon on 28 December, bears out this impression. According to Mr. Siméon, the police dealt with 6,560 cases in the course of the year, as compared with 7,677 in 1999; and 37 police officers were murdered or were the victims

of attempted murder, compared with 62 the previous year. Under the heading of assassination, murder and attempted murder, 340 cases were registered during 2000. That figure was lower than the preceding year, when 536 cases were registered. According to other figures provided by the police spokesman, 1,749 cases of assault were registered in 2000, as against 1,706 in 1999. The police dealt with 73 drugs cases in 2000, as compared with 121 in 1999. Vehicle thefts numbered 146, compared with 149 the previous year.

33. The police broke up 226 gangster networks, compared with 237 in 1999; there were 62 cases of weapons seizures, compared with 153 in 1999; 77 lynchings were recorded in 2000, as against 52 for 1999; 337 bodies were discovered in 2000, up from 302 the year before; 31 cases of disappearance were recorded, compared with 73 in 1999; lastly, Mr. Siméon said that there had been a slight fall in the number of drugs cases, murders, assassinations and assaults in 2000 compared with 1999. An analysis of the breakdown of law and order seems to show that, although there are many causes, this trend is linked mainly to the weakness of the criminal justice system. The independent expert therefore recommends that comprehensive action should be taken in training and to strengthen the criminal justice system, as a basis for a solution to the law and order problem. The police say they are tired of arresting criminals who are immediately released by corrupt judges. Judges complain about illegal arrests by police officers involved in racketeering. Prison officers refuse to release detainees who have release orders. No one is to blame, of course, since each link in the chain blames the other.

V. THE JUDICIAL SYSTEM

34. In his report to the General Assembly (A/55/618), the independent expert paid tribute to the efforts of the Ministry of Justice, which had just finished preparing a number of draft laws. He welcomed in particular the Ministry's decision to coordinate actors in civil society and, of course, representatives of the judiciary. This decision was implemented with the assistance of MICAH and put into practice through two forums or conferences on justice reform (para. 19). At the first conference in which the independent expert participated, from 25 to 29 October, the debate on the draft laws concerning the Judges School regulations, the Supreme Council of Justice regulations and the judiciary regulations was conducted in an open, critical and constructive spirit. In addition to these bills, which will form the basis of an independent judiciary, participants at the first conference also analysed and enhanced two other pieces of draft legislation on the control and punishment of illegal drugs trafficking and on laundering of the proceeds of illicit drugs trafficking, and other serious offences.

35. The independent expert particularly appreciated the extremely positive contribution to discussion of the latter two texts made by two other experts invited by MICAH, who are based at the Centre for International Crime Prevention in Vienna. He also persuaded the authorities to call on these experts when Parliament considered the bills so that they could illuminate the discussions as necessary. From his discussions with these experts, it appears that it will be possible to organize a course for one or more Haitian judicial officers in order to familiarize them with the special investigation techniques needed for offences of this type. As the judicial system and efforts to combat impunity have been his major concern up to now, the independent expert was very pleased to have been able to support the Haitian Government at this first conference.

36. The second conference took place in December 2000 and addressed major issues such as criminal justice policy, reform of criminal law and access to justice. In 1995 and 1996, the independent expert had in fact made an urgent recommendation explicitly concerning the reform of the Penal Code and Code of Criminal Investigation. As Mr. Louis Nkopipie Deumeni, adviser to MICAH, said at the opening of the second conference:

> "Despite the great resistance to change exemplified by successive coups d'état, the momentum towards the rule of law has never faltered. However, Governments' clear desire for progress in this respect has been thwarted by numerous institutional problems rooted in the nature of earlier regimes. The judiciary became an 'instrument of the State's repressive apparatus' because the judicial system, and particularly the criminal justice system, had been designed as an instrument of the Executive. This was the case as long as the values previously protected by the Legislature were not always shared by the majority of the population. The exclusive State was over-protective of the interests of a minority - the 'haves' - and ignored the concerns or rather the real situation of the majority. These divisions were there from the outset. The colonial State imposed its own law, i.e. its own values, without taking account of existing law. The Haitian State too, once independence had been gained and for a long time afterwards, exploited this situation. One of the priorities of the new policy on criminal justice is to reconcile the two legal orders. It is really a matter of reconciling 'the Republic of Port-au-Prince' with 'the rest of the country'. The decision by the Government of Haiti to accede to the main regional and international human rights instruments demonstrates its desire to endorse the values they uphold. These instruments and the case law deriving from their implementation have established a number of principles that are not without significance for criminal justice policy in the States parties. The right to punish, for example, a traditionally kingly right exclusive to the State, has become more and more circumscribed by human rights law. More than ever, the modern State must explain the reasons of State and take account of the values mentioned above when drafting criminal justice policy. These values in no way run counter to the Government's political vision of a State genuinely based on the rule of law. There is hence a dual challenge: to make the transition from the existing criminal justice system to a modern system whose rules meet the needs of a State based on the rule of law; and to implant criminal law in the culture of ordinary people to ensure that it really works."

37. The independent expert wondered recently whether it is necessary to recall that access to justice is one of the fundamental rights granted to Haitian citizens. Particularly in the press and organizations of civil society, Haitians are inclined to judge the justice system harshly, complaining about its slowness, inaccessibility and cost, but also, and above all, its lack of credibility or integrity. Many citizens are convinced that, in the cases before it, the justice system takes the side of the rich against the poor, of the town-dweller against the country-dweller, of the educated against the illiterate, of the man against the woman.

38. What disturbs people is the impression of deep corruption, or at least of arbitrariness or lack of consistency, that is given by the way justice works at present. The image of the Haitian judicial system with the public at large is so poor that there is no point in making the revival of its credibility a prime objective. There have been many occasions when the morality of persons within the judicial system has been found wanting, many occasions when ethics have been put

aside in favour of private, political or personal interests. Rightly or wrongly, the judiciary is accused of not often showing impartiality or independence, whether in respect of political power or in respect of the power of money. Given the current public disaffection with a judicial system that is perceived as serving "class" justice, what is needed is structural reform, along with publicity aimed at correcting these negative impressions, in order to reassure both local people themselves and foreign investors, for whom the credibility of the judicial system may be a key factor in their investment decisions.

39. In the first place, the Haitian Government must bring its action on justice into line with its announced intentions by taking steps to win over public opinion. The independent expert has often heard from friends in the international community that tens of millions of dollars have been spent with no visible result. He has gone on record before the General Assembly as disagreeing with such claims. He acknowledges that Haiti is clearly still moving only haltingly towards the rule of law, but the proposed legislation put before Parliament, which he has examined and discussed critically with Haiti's judges, lawyers and actors of civil society, lays the foundations of an independent judiciary and may very well fulfil the Haitian people's hopes for justice. Note that the independent expert has since 1994 been in a position to see at first hand how seriously the issue of judicial reform has been discussed. He believes that the implementation stage has begun. Donors are as important to that process as the Haitian Government. Their coordination and their commitment to support and monitor the whole process will be decisive factors.

40. The independent expert therefore encouraged and advised UNDP on the development of a UNDP project on justice and recommends that donors should support the UNDP plan of action on justice in Haiti. Funding is essential, but so is support of the Government. During an interview on 20 December 2000, the independent expert urged President-elect Jean-Bertrand Aristide to translate his political will to enforce the law rigorously in concrete action, if he truly wished to win over a wary public with a tendency to regard certain government policies as token policies put forward as window-dressing. He also explained to him that only with firm, unwavering commitment on his part would justice reform have a chance of success.

41. The first conference also gave the independent expert the opportunity to attend the opening on 29 September 2000 of the Raboteau trial, rightly regarded as the "coup d'état trial". He pressed for every guarantee of a fair trial to be available to the accused. Thanks to the MICAH advisers, he was able to follow the trial very closely, and he hailed its outcome in the press (see annex). He believes it is necessary to repeat the appeal he has been making for some years to the Commission on Human Rights and the General Assembly to request the United States to return without delay all the documents of the Haitian Armed Forces and of the Front pour l'avancement et le progrès Haitien (FRAPH). He also wishes to recall here and now the opinion expressed by the Republican John Conyers, Jr., chairman of a bi-partisan congressional delegation that visited Haiti from 10 to 12 September 1999, that echoed the opinion presented by the independent expert in November 1998. The Congressman said that a study undertaken by the American Law Division of the Congressional Research Service had concluded that the documents were the property of the Haitian Government and that their seizure clearly violated the spirit, if not the letter, of the mandate of the Multinational Force. The claims of the Department of Defense and other branches of the United States Government that the documents should be amended in order to comply with the Privacy Act were simply without foundation and the documents should be returned intact.

42. The Raboteau trial, a key moment in efforts to combat impunity, was preceded by another trial, the Carrefour-Feuilles trial, in which for the first time Haitian police officers were tried and convicted, for the murder of 11 young Haitians. This trial was regarded by all as an important step forward in efforts to combat impunity, although the sentences of 3 years' imprisonment were felt by some to be lenient: Haitian law provides for a minimum of 3 years and maximum of 15 for murder. In the view of some of those observing the trial, which was broadcast on radio and television, the defence demonized the victims, calling them "Zenglendos", or bandits, thereby persuading the judges that there were mitigating circumstances. It was nevertheless a first step in efforts to combat impunity.

43. With regard to the Raboteau trial, the independent expert wishes to emphasize the important question of reparation, restitution and rehabilitation for victims of human rights violations. This question is of major importance for the United Nations Commission on Human Rights, which mandated first Professor Theo van Boven and then Professor Cherif Bassiouni to draw up a set of principles in this area. In Haiti, the National Truth and Justice Commission (CNVJ), created on 28 March 1995, recommended the establishment of a national commission on reparation (CNR) for the victims of the 30 September 1991 coup d'état. This commission had still not been established by the end of 2000, on the pretext that the Ministry of Finance is concerned at the financial implications of signing the decree prepared by the Ministry of Justice, which has been submitted for the President's approval and signature. As mentioned in a previous report (A/53/355, para. 9), the Ministry of Justice established an Office of Prosecution and Follow-up for Victims which has compensated in some measure for the lack of a reparation commission. The independent expert has had discussions on the reparation commission with the Ministry of Justice and human rights organizations and shares their opinion that such an institution will be of great judicial significance.

44. He basically endorses the human rights organizations' recommendation that a reparation commission should be established without delay, as a mixed, temporary body including representatives of the victims. Its task would be to ensure reparation for damages suffered by the victims already identified by CNVJ and any others meeting the criteria set, within six months of its establishment; it could also provide legal aid to victims who lack the financial means to take proceedings in law against the perpetrators of the violations.

45. Judging from the draft decree, there seems to be little divergence between the approach of the human rights NGOs and that of the Government. This would tend to support the argument attributed to the Ministry of Finance, although the independent expert has not, unfortunately, been able to meet with the Ministry. The commission would have a limited mandate of, say, three years, in which to carry out its task of formulating a reparations policy for the Government, helping with the implementation of that policy and the psycho-social rehabilitation of victims, and providing medical care and legal aid. In arguing for the establishment of a reparations commission as soon as possible, the human rights organizations explained that the State's dilatoriness in creating the commission confirms the coup victims in their status of eternal victims, a situation which they could have overcome had they been able to regain the self-esteem lost in the blind violence of the coup d'état.

VI. INTERNATIONAL COOPERATION

46. It is encouraging to note that the Representative of the Secretary-General in Haiti, Mr. Alfredo Cabral, is held in high esteem both in political circles and by civil society. This has strengthened the authority of MICAH and facilitated the implementation of its mandate: while the start-up of activities suffered enormously from the delay in its establishment, MICAH deserves our congratulations, since in the space of six months of actual operation it has contributed greatly to furthering the promotion of human rights. Its Human Rights Section, covering two fields, namely capacity-building and human rights monitoring, has worked both with State institutions and with human rights NGOs. The independent expert therefore regrets the recommendation not to renew the mandate of MICAH, which officially ends on 6 February 2001. This regret is warranted especially in view of the recommendation made by the independent expert regarding collaboration between the Office of the High Commissioner for Human Rights (OHCHR) and MICAH; he pointed out that the objective should be a permanent OHCHR presence to prevent a vacuum from being created when MICAH ceases its activities, particularly in the field of capacity-building both for State institutions (police, prisons, judicial system, Office of the Ombudsman) and for NGOs and civil society in general. The same recommendation had been made before the departure of the International Civilian Mission in Haiti (MICIVIH), but it was apparently not taken into consideration.

47. Now that MICAH is about to leave Haiti, it is essential for OHCHR to make itself more visible by opening an office which, through the implementation of a technical assistance programme, could assist the Haitian Government in the process of ratifying the principal human rights instruments, including the Convention against Torture, the International Covenant on Economic, Social and Cultural Rights and the two Optional Protocols to the International Covenant on Civil and Political Rights. The Executive and the Legislature are both ready to accept it. The implementation of this recommendation becomes urgent with the ending of MICAH, even if UNDP is not standing idle. This is yet another reason for OHCHR to work in close cooperation with UNDP on the implementation of a plan of action for human rights. In the context of the winding-up of MICAH, it is essential to ensure that MICAH equipment can be made available to the Haitian Government and, wherever possible, to human rights NGOs. One priority would be to assign a vehicle, some computers and a photocopier to the Prosecutor's Office of Port-au-Prince. In view of the dangers facing Haiti, the independent expert is of the view that the office of the Representative of the Secretary-General in Haiti should be maintained with at least a small unit that, until the opening of an OHCHR office, could continue with capacity-building and limited human rights monitoring activities.

48. Created by a decree of 12 September 1995, the Office of the Ombudsman (OPC), whose aim is to protect everyone against any form of abuse by the public authorities, will certainly be revitalized thanks to the bill on its organization and functioning which is now being finalized. With the support of MICAH, OPC is currently preparing an institutional development plan that will define its priorities for the next five years. As the independent expert was told by Mr. Denis Racicot, technical adviser to OPC on the redefinition of its terms of reference:

> "The current period of transition is an appropriate time for evaluating the institution's performance and carrying out a forward-looking and strategic exercise to ensure its survival, consolidation and full development for the purpose of serving the Haitian people".

OPC must work quickly to establish its credibility as an organization for protecting citizens' human rights and ensure universal access to its services. Action for the consolidation of activities to promote human rights is now viewed as one of the main priorities. OPC will perform an active and vital role in disseminating the values and principles of human rights. That work could even serve as a catalyst for other efforts and facilitate the advancement of the institution as a body enjoying ever-wider public support. The OHCHR should, of course, provide every possible assistance to OPC and work in close cooperation with that institution.

49. The programme of cooperation between the Haitian Government and UNICEF focuses on the ethical dimension of human rights, working from the premise that there can be no sustainable human development if civil, political, economic, social and cultural rights are violated. Protection of the most vulnerable groups of children and young persons, such as street children, orphans, children in domestic service and children in conflict with the law, is a priority concern and will require capacity-building for child welfare officers. According to the representative of UNICEF, some 20,000 children under 5 years of age are HIV-positive and about 150,000 children are reportedly AIDS orphans.

50. The primary goal of international cooperation is peace. This explains the independent expert's interest in the UNESCO House for the Culture of Peace Project in Haiti initiated by Mr. Bernard Hadjadj, who has arranged for a study to be made and organized a workshop on restitution and validation bringing together 70 participants. In this study, the Haitian sociologist Guy Alexandre points out that everyone agrees that there has been an undermining of the authority of the State. He rightly notes that Haiti, an old nation, is merely at the beginning of a process of learning about the culture of peace and therefore needs ongoing and long-term support to help governmental structures, national representatives, locally elected figures and all members of civil society build a culture of peace and respect for human rights. The independent expert shares this view and can only encourage OHCHR to consider to what extent it might contribute to the effective implementation of this project, whose human rights dimension is undeniable.

VII. RECOMMENDATIONS

51. Haiti is once again heading towards an area of turbulence whose implications could be detrimental to respect for and the enjoyment of human rights. This comes at a time when a new administration is taking over in the White House, which must give Haiti a chance to deal with the instability. Haitians will also have to pool their own resources and roll up their sleeves for the common endeavour of building a country from which social inequalities will gradually be eliminated. Every Haitian, whether inside the country or part of the diaspora, must add his brick to the edifice: the aim, first and foremost, is to lay the foundations for a new Haiti that respects the rule of law. Haiti's greatest ill is the lack of rigorous law enforcement. How many criminals

or delinquents escape the clutches of the justice system and enjoy shocking impunity? Also, how many children are abandoned to their fate? What ravages are continuing to be caused by the AIDS virus? Is unemployment definitely endemic? Many ills affect this island full of history, but there is reason to be hopeful judging by the solemn pledge of President Aristide.

52. More than declarations, the Haitian people, like the international community, nevertheless expect meaningful action for a strengthening of democracy, respect for human rights, good governance and the elimination of corruption. The challenge can be met if everyone agrees to play his part in upholding democratic principles. Political tolerance and constructive dialogue founded on the rule of law will enable a reunited Haitian people to achieve national reconciliation. For its part, the international community will have to show solidarity with this country, the poorest in the northern hemisphere, which can succeed with a little understanding and generosity from bilateral and multilateral donors. For the most part, however, the solution is in the hands of the Haitian people, both men and women, who will essentially have to draw upon their own resources. President Aristide must give the signal, first of all by bringing order within the ranks of his supporters; with his swearing in, on 7 February 2001, he is more than the leader of Fanmi Lavalas - he becomes the President of all Haitians.

53. As a contribution to this process of reconciliation, leading to the institutionalization of democracy and the restoration of the rule of law, the independent expert makes the following recommendations to the Haitian Government (Nos. 1 to 13), to the international community (Nos. 14 and 15) and to the United Nations, i.e. Office of the High Commissioner for Human Rights (Nos. 16 to 18).

A. Recommendations to the Haitian Government

1. Haitian National Police

54. The first four recommendations concern the police forces:

No. 1. The independent expert is concerned about the increasing politization of the National Police observed over the past few months. The Haitian Government should take all the necessary measures to stop this dangerous trend, which has adverse consequences for human rights.

No. 2. Allegations of human rights violations by the police have been recorded in the past few months, but unfortunately no criminal proceedings are being taken. The independent expert recommends the appointment of an inspector-general of the National Police having the requisite competence, integrity and independence to ensure that the cases are dealt with promptly and that those responsible for the violations are brought before the courts to be tried and sentenced if found guilty.

No. 3. Several cases of corruption related to drug trafficking and other serious offences have been reported in the past few months. In this regard, the Haitian Government should undertake to adopt legislation against corruption and put in place systems characterized by integrity. Administrative inquiries should likewise be encouraged and the officials responsible brought before the courts for trial.

No. 4. The independent expert has also noted an increasing number of incidents involving the use of firearms (with or without political motives). He therefore recommends that the Haitian Government should implement a policy and enforce relevant legislation to improve the control and registration of firearms. Arms smuggling should be eradicated.

2. Administration of justice

55. Recommendations 5 to 8 deal more particularly with the judicial system:

No. 5. The independent expert has noted that nearly 80 per cent of the prison population is awaiting trial. At the National Penitentiary, about 90 per cent of the inmates are in pre-trial detention. Furthermore, a number of detainees have been arrested without a warrant and the 48-hour time limit for police custody is not observed in many cases. The transfer of prisoners from detention centres to the courts continues to be problematical. Most judges do not apply the international human rights instruments and training courses in human rights should continue to be organized for judges, police officers and prison staff.

No. 6. The independent expert has observed a serious deterioration of the criminal justice system. He has noted the poor communication between the various components, namely the Public Prosecutor's Office, the Prison Authority, the offices of the examining magistrates and the National Police. With a view to improving coordination between these institutions, it is important for them to meet on a monthly basis or at other regular intervals to be decided in order to resolve common problems and thereby strengthen the criminal justice system.

No. 7. The trials relating to the events at Raboteau and Carrefour-Feuilles have marked a step forward on the path towards the proper administration of justice. However, judicial inquiries need to be considerably improved. Logistical arrangements and working conditions in the Public Prosecutor's Office and the offices of examining magistrates should also be improved.

No. 8. Administrative and judicial inquiries should be made into corruption in the administration of justice and those responsible for corruption should be brought before the courts.

3. Management of the National Prison Authority

56. The following recommendation is intended for the Prison Authority:

No. 9. Overcrowding in prisons is a serious concern, as is the malnutrition of inmates, which has led a number of deaths. The Prison Authority needs to improve its management methods urgently, especially insofar as the provision of food and health care for inmates is concerned.

4. General recommendations

57. Recommendations 10 to 13 deal with more general issues:

No. 10. The Haitian Government should ratify the following international human rights instruments: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the two Optional Protocols to the International Covenant on Civil and Political Rights.

No. 11. In the course of 2000, the Judges School and the Office of the Ombudsman (OPC) played a very important role in the promotion of human rights. The Haitian Government should maintain its support and increase the funding for these two institutions, especially in respect of human resources and logistics.

No. 12. The last elections were marred by various incidents involving political demonstrations organized in several departments. The Haitian Government should ensure respect for freedom of opinion, expression, association, assembly and peaceful demonstration.

No. 13. Following the successful Raboteau trial, at which several former members of the Haitian armed forces and FRAPH were found guilty, the President of Haiti should sign a decree establishing the National Commission on Reparation (CNR).

B. Recommendations to the international community

58. The following recommendation is addressed to the international community:

No. 14. The international community should pursue technical cooperation and assistance programmes in such fields as the administration of justice, human rights and prisons. Cooperation with Haiti should be planned as part of a strategy covering the long term and not, as has hitherto been the rule, the short term.

No. 15. Following the guilty verdict rendered at the end of the Raboteau trial, and the convictions in absentia of several persons responsible for human rights violations who had taken flight, countries where these fugitives may be found (such as Panama, the United States of America, the Dominican Republic and Honduras) should cooperate with the Haitian authorities to arrest and extradite them.

C. Recommendations to the United Nations

59. The following recommendations are addressed to the United Nations:

No. 16. Aside from the monitoring of human rights, the independent expert recommends that the United Nations should place more emphasis on capacity-building. One of the objectives here is to strengthen the commitment to democratic values and the independent expert recommends the holding of a symposium on the culture of democracy with the participation of the principal leaders of political parties and prominent members of civil society. The Office of the High Commissioner for Human Rights could also take charge of ensuring support for the Office of the Ombudsman and human rights NGOs. The Office of the High Commissioner of

Human Rights should undertake a programme of technical cooperation and assistance, particularly for capacity-building inter alia in State institutions, the Office of the Ombudsman (OPC), the Judges School, the administration of justice and civil society.

No. 17. In order to help remedy the serious logistical problems which affect the proper functioning of the system for the administration of justice in Haiti, the United Nations should donate some MICAH equipment (vehicles, computers, printers, etc.) to the Public Prosecutor's Office and the offices of examining magistrates.

No. 18. Agencies of the United Nations system in Haiti should work in synergy with a view to effectively and efficiently incorporating the human rights component into all their activities. A project for technical cooperation on human rights should be set up urgently by the Office of the High Commissioner for Human Rights and UNDP and by the other agencies of the system associated in its implementation.

Annex

UNITED NATIONS PRESS RELEASE

20 November 2000

RABOTEAU VERDICT "A LANDMARK" BUT CASE NOT YET FINISHED, SAYS UNITED NATIONS INDEPENDENT EXPERT

The United Nations independent expert on the human rights situation in Haiti, Mr. Adama Dieng, said today that the Haitian justice system had taken "a huge step forward" with the completion of the trial in relation to the 1994 Raboteau massacre.

According to Mr. Dieng, the case was the longest and most complex in Haiti's history and was the first to make extensive use of expert testimony and documents from the military's archives. The trial, which lasted six weeks, ended on 9 November 2000. The jury found 16 of the 22 defendants in custody guilty of participating in the Raboteau massacre, an attack by military and paramilitary units in 1994 on pro-democracy activists under Haiti's 1991-1994 dictatorship. Most of those convicted were found guilty of murder or of being an accomplice to murder.

Thirty-seven defendants who failed to appear for trial, including Former Lieutenant General Raoul Cédras, were convicted in absentia by the trial judge on 16 November 2000 and sentenced to life imprisonment. The Court also issued a civil damages judgment against the defendants for one billion gourdes (about $43 million).

But the Raboteau case was not by any means finished, Mr. Dieng added. "The Haitian justice system must continue to pursue those convicted in absentia. In the event that they are arrested and returned to Haiti, they must be given a new trial as required by Haitian law. Countries where the fugitives may be found, especially Panama, the United States, Honduras and the Dominican Republic, should cooperate with the Haitian authorities to arrest and extradite them", he said.

The independent expert also reiterated his call to the United States, which seized 160,000 pages of documents from Haitian military and paramilitary facilities in 1994, to hand over those documents "without exception or delay", as well as any other evidence it possessed that might shed light on human rights violations under Haiti's dictatorship.